

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

D&S VENTURES and DEREK HOYTE,

Petitioners,

v.

STATE OF WASHINGTON, EPARTMENT
OF ECOLOGY, and CLARK COUNTY,
STATE OF WASHINGTON

Respondents.

SHB No. 05-031

DISSENTING OPINION

I dissent. The evidence presented by Petitioner and not controverted by Respondents' evidence was that the "cloud" area drawn on Exhibit A-43, also identified as the "knoll", was the only practical location for a residence. The County had asked Petitioner to perform soil tests on the entire five acre site in order to find a conforming location. Such survey would have been inordinately expensive, and Petitioner was right in refusing to fund such work. The steeply sloped site visually presented only one area where it was practical to locate a residence: the knoll. Test pits there identified competent soils only within the "cloud" area. As stated by Donald J. Bruno, Petitioner's Engineering Geologist:

Based on our field reconnaissance at the subject property, the history of landslides on adjacent bordering properties, the topographic constraints of steep onsite slopes and the presence of soft compressible soil at other relatively flat sections of the property, it is our opinion that the building site suitable for construction is located along the north-south trending knoll in the northwest area of the site.

Construction of the proposed residence at other areas, other than the above-mentioned knoll, assumes an inordinate amount of risk associated with slope

1 instabilities, landslide activity and the moderate to high potential for liquefaction
2 of supportive soil during seismic events.

3 Ex. R-4, page 4.

4 The majority contends that no witness or exhibit was able to identify where the residence
5 building envelope would be in relation to the 100 foot setback. (Page 11, line 18) Yet even
6 without this knowledge they conclude that the proposal is not the minimum necessary to afford
7 Petitioner the reasonable use of the property, and that it is possible that a less intrusive proposal
8 may be appropriate if it is *conclusively* shown that there is no other reasonable building site on
9 the property. (P. 18, lines 9-12)

10 The majority does not state what the extent of the requested variance was. Petitioner was
11 clear in his appeal that he was seeking a 30 foot variance from the 100 foot setback. (Ex. A-36)
12 The building footprint would be behind that line. Petitioner was not required to design a specific
13 building in order to seek a variance. He need only show that a minimum building area was
14 needed for reasonable use of the property. In my view he has done that.

15 Reasonable use to the site requires that Petitioner be permitted to construct more than a
16 small cabin. His proposal to construct a residence of a size commensurate with the cost of
17 developing the site was reasonable. It is no answer to say that he could reduce the size of the
18 residence in order to avoid the need for a variance. With a steep slope to the back of the site
19 requiring a 50 foot setback, Petitioner is truly between a rock and a hard place.

20 I would approve a variance of thirty feet to enable Petitioner to make reasonable use of
21 this site without endangering the ecological values protected by the Shoreline Management Act

1 and the Clark County Shoreline Master Plan. After all, nearby properties in the Urban Shoreline
2 Environment are allowed to locate their residences only 35 feet from the OHWM, and the
3 neighboring property to the south was granted a variance of ten feet. If these developments do
4 not threaten those values, neither would a thirty-foot variance here.

5 DATED this 23rd day of June 2006.

6 SHORELINES HEARINGS BOARD

7 GORDON F. CRANDALL, Member
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